

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 27, 2006 Session

SHERIDAN MUSIC GROUP, INC. v. BONNIE LYNN BRAMLETT, ET AL.

Appeal from the Chancery Court for Davidson County
No. 00-4017-IV Richard H. Dinkins, Chancellor

No. M2005-01307-COA-R3-CV - Filed on November 8, 2006

Sheridan Music Group, a company formed to collect and administer royalties for songwriters, appeals the trial court's ruling that Letters of Authorization and Instruction signed by a songwriter were terminable at will. The Letters of Authorization specified no time frame and stated the directives therein were "irrevocable unless specifically changed in writing" by SMG. Pursuant to the Letters of Authorization, the songwriter directed any and all companies owing royalties to the songwriter, including BMI and Embassy Music, to pay to SMG royalties the songwriter was entitled to receive. When the defendant songwriter contacted the companies paying the royalties that she was rescinding the Letters of Authorization, SMG filed this action to *inter alia* enjoin the songwriter from interfering with its contractual right to receive the royalties unless and until SMG revoked the Letters. The trial court found the songwriter had the right to terminate her relationship with SMG, in which event SMG was under a duty to notify the companies owing royalties to the songwriter that the Letters of Authorization were revoked and to pay the royalties directly to the songwriter. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Daniel H. Puryear, Nashville, Tennessee, for the appellant, Sheridan Music Group, Inc.

Norman Gillis, Nashville, Tennessee, for the appellee, Bonnie Lynn Bramlett.

OPINION

Bonnie Lynn Bramlett acquired a one-half interest in a catalog of music compositions known as the Del-Bon catalog when she obtained a divorce from her first husband who was a successful

songwriter.¹ Thereafter, Bonnie Bramlett married Danny Sheridan, another songwriter, and the newlywed couple founded the Sheridan Music Group, Inc. Bramlett and Sheridan were the only shareholders, each owning half of the outstanding shares.

SMG was a business enterprise that collected and administered royalties payable to songwriters. In order to carry out its business purpose, SMG requested songwriters, like Bramlett and Sheridan, to sign Letters of Authorization and Instruction (Letters of Authorization), which directed companies owing royalties to the songwriter to pay the songwriter's royalties to SMG. The Letters read in pertinent part:

You are hereby authorized, and directed to account to and pay to [SMG], instead and in lieu of ourselves as individuals, any and all royalties and other monies due to us You may consider these instructions irrevocable unless specifically changed in writing by an officer of [SMG] and certified by an original impression of [SMG]'s Corporate Seal.

When the joy left the marriage, Bramlett and Sheridan obtained a divorce. The couple's respective interests in SMG were not changed by the divorce, each retaining their respective shares of SMG. After the divorce, Bramlett realized that she did not control SMG and, thus, could not control SMG's use of her royalties. More specifically, she could not compel SMG to remit her share of the royalties to her. Therefore, she decided to notify companies like Embassy Music Group, which she had previously instructed to remit her songwriter royalties directly to SMG, to remit payment of her songwriter royalties directly to her instead of SMG. When her now ex-husband, Sheridan, learned of Bramlett's efforts to terminate the "irrevocable" Letters of Authorization, SMG served notice on Embassy Music, and the other companies, of their obligation to honor the Letters of Authorization unless and until SMG revoked the letters.

After receiving conflicting instructions from Bramlett and SMG, Embassy Music, among others, notified SMG that it would withhold all royalty payments until the dispute between Bramlett and SMG was resolved. As a consequence, SMG filed this action against Bramlett seeking a Declaratory Judgment that Bramlett had "irrevocably assigned to SMG all royalties due to Bramlett." SMG also asserted a claim for breach of contract and intentional interference with contractual relations. Bramlett responded with a Counterclaim in which she sought dissolution of SMG as well as damages for undue influence on a confidential relationship, fraud, and misrepresentation.²

¹Bonnie Bramlett acquired a one-half interest in the songwriter's share of royalties for the catalogue as part of a divorce settlement with her first husband, Delaney Bramlett, who wrote the songs.

²Interestingly, the Letters of Authorization appear to be the only documents in the record indicating any type of agreement by Bramlett that she would allow her royalties to be paid to SMG rather than her, personally. We were unable to find any contract between SMG, Defendant, and Danny Sheridan showing Defendant's assent to such an arrangement. The Letters of Authorization themselves do not constitute such a contract.

The Complaint filed by SMG and the Counter-Complaint filed by Bramlett were just the beginning of a series of pleadings, counter-pleadings, and motions. As the volley of pleadings and motions continued over the next couple of years, SMG prevailed on one aspect of its Declaratory Judgment action. The trial court ruled that SMG was entitled to summary judgment on its claim that it was entitled to “all royalties prayed for in the Complaint, including, but not limited to, those royalties due from BMI and ASCAP.”

Subsequently, in a December 2001 order, the trial court dismissed all of Bramlett’s counterclaims except those that involved “allegations of Minority Shareholder Oppression.” These rulings, however, did not signal the end of the litigation. Instead, the parties continued to litigate. After multiple amended pleadings, motions for summary judgment and cross motions for summary judgment, the trial court entered an Agreed Order on March 4, 2005, dismissing all of Bramlett’s claims except for whether Bramlett could “prospectively revoke the Assignment Letters.” The parties then filed cross motions for summary judgment concerning that issue.

Bramlett specifically requested in her Motion for Summary Judgment that the trial court find that the Letters of Authorization were terminable at will and that the court order SMG to take whatever steps were necessary to immediately notify the companies remitting the royalties to SMG that the Letters of Authorization were terminated. Ultimately, the trial court found that

Bramlett does not have the authority to revoke the Assignment Letters . . . , but may terminate her agreement with SMG concerning the assignment of royalties, and may direct SMG to notify royalty payors of the termination of her assignment. The Court based its ruling on its finding that there is no genuine dispute of material facts to the intent of the Assignment Letters’ signators that the Assignment Letters not be perpetual, and that they be terminable at will.

Following the entry of the order, Bramlett sent a letter to SMG instructing SMG to terminate the Assignment Letters and SMG perfected this appeal.

STANDARD OF REVIEW

The issues were resolved in the trial court upon summary judgment. Summary judgments do not enjoy a presumption of correctness on appeal. *BellSouth Adver. & Publ’g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). This court must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997). We consider the evidence in the light most favorable to the non-moving party and resolve all inferences in that party’s favor. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002). When reviewing the evidence, we first determine whether factual disputes exist. If a factual dispute exists, we then determine whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993); *Rutherford v. Polar Tank Trailer, Inc.*, 978 S.W.2d 102, 104 (Tenn. Ct. App. 1998).

Summary judgments are proper in virtually all civil cases that can be resolved on the basis of legal issues alone, *Byrd*, 847 S.W.2d at 210; *Pendleton v. Mills*, 73 S.W.3d 115, 121 (Tenn. Ct. App. 2001); however, they are not appropriate when genuine disputes regarding material facts exist. Tenn. R. Civ. P. 56.04. The party seeking a summary judgment bears the burden of demonstrating that no genuine disputes of material fact exist and that party is entitled to judgment as a matter of law. *Godfrey*, 90 S.W.3d at 695. Summary judgment should be granted at the trial court level when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support one conclusion, which is the party seeking the summary judgment is entitled to a judgment as a matter of law. *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 620 (Tenn. 2002); *Webber v. State Farm Mut. Automobile Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001). The court must take the strongest legitimate view of the evidence in favor of the non-moving party, allow all reasonable inferences in favor of that party, discard all countervailing evidence, and, if there is a dispute as to any material fact or if there is any doubt as to the existence of a material fact, summary judgment cannot be granted. *Byrd*, 847 S.W.2d at 210; *EVCO Corp. v. Ross*, 528 S.W.2d 20 (Tenn. 1975). To be entitled to summary judgment, the moving party must affirmatively negate an essential element of the non-moving party's claim or establish an affirmative defense that conclusively defeats the non-moving party's claim. *Cherry v. Williams*, 36 S.W.3d 78, 82-83 (Tenn. Ct. App. 2000).

ANALYSIS

SMG contends Bramlett is procedurally barred or estopped to assert that the assignment was terminable at will.³ We have concluded that SMG waived these issues when it entered into an Agreed Order signed on March 4, 2005. Pursuant to the Agreed Order, SMG and Bramlett waived and/or dismissed all remaining claims against each other with the exception of Bramlett's claim that she had the right to revoke the Letters. The Agreed Order expressly reserved Bramlett's "right to seek prospective revocation of the Letters of [Authorization]." To further affirm SMG's express agreement to try the issue SMG now contends is barred, the Agreed Order also stated, "Within 14 days of entry of this Order, the parties shall file cross motions on the sole remaining issue of Bramlett's right to prospectively revoke the Letters of [Authorization], based on the intent of the parties at the time of execution of same, supported by memoranda of law and affidavits, if any, . . ."

Having resolved the other issues on appeal, we therefore focus our attention on the dispositive issue, which is whether Bramlett had the right to terminate the assignment of royalties stated in the "to whom it may concern" Letters of Authorization dated January 1, 1996. Bramlett contends the Letters of Authorization were revocable by either party at will, while SMG contends the Letters were perpetual unless and until revoked by SMG. We have concluded the assignment of Bramlett's royalties memorialized in the Letters of Authorization was for an indefinite term and, therefore, was terminable at will by either party because contracts that are for an indefinite duration are terminable at will by either party with reasonable notice. See *McReynolds v. Cherokee Ins. Co.*,

³In its brief, SMG contends Bramlett's termination issue was barred on the basis of compulsory counterclaim, *res judicata* and/or collateral estoppel.

896 S.W.2d 777, 779 (Tenn. Ct. App. 1994)(citing *First Flight Assocs., Inc. v. Professional Golf Co., Inc.*, 527 F.2d 931 (6th Cir. 1975)).

SMG attempted to hang its hat on the provision that notice of termination to the companies paying the royalties, like BMI and Embassy Music, had to be from SMG and in a particular form. That argument fails to recognize Bramlett's right to notify SMG that she was terminating the agreement. The provision in the Letters of Authorization that SMG relies on does not prevent Bramlett from terminating the assignment; instead, it memorializes SMG's affirmative responsibility if and when Bramlett notifies SMG that the assignment is terminated.

What is significant is that the Letters of Authorization contained no provision relative to a term of the assignment or a procedure by which the authorization stated in the Letters of Authorization could be withdrawn or terminated. It was merely an assignment of an indefinite term.

The only reference to termination in the Letters of Authorization pertained to the recipients of the Letters, such as BMI, and Embassy Music. As the Letters of Authorization provided, the recipients were to consider the "instructions irrevocable unless specifically changed in writing" by an officer of Plaintiff and certified with an original impression of Plaintiff's corporate seal. That instruction, however, has no bearing on the respective rights and responsibilities between Bramlett and SMG, particularly the right of Bramlett to notify SMG that she was terminating the assignment.

In addition to the above, SMG also contends the issue was resolved when the trial court granted it partial summary judgment in May of 2001. We find this argument to be without merit. The May 2001 Order granting partial summary judgment was not final prior to the entry of the April 28, 2005 Order; therefore, the May 2001 Order was subject to revision. The May 2001 Order was not a final order because more than one claim for relief was presented in this action, other issues remained to be resolved after the entry of the May 2001 Order, and the trial court did not designate the May 2001 Order as final judgment pursuant to Tenn. R. Civ. P. 54.02.

In the absence of such determination and direction by the trial court, any order or other form of decision, however, designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order is subject to revision at any time before the entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

Tenn. R. Civ. P. 54.02.

We also find the contention to be without merit because the May 2001 Order was entered prior to Bramlett giving SMG effective notice that she was terminating the assignment. Initially, instead of notifying SMG, Bramlett served notice on the companies that were paying the royalties, such as BMI and Embassy Music, that she was terminating the assignment of her royalties. The trial court found the termination notices to BMI and Embassy Music to be ineffective. That is significant

because in the initial complaint, which was filed after Bramlett sent the notices to BMI and Embassy Records, SMG sought a Declaratory Judgement asking *inter alia* that it was entitled to receive the Bramlett's royalties as stated in the Letters of Authorization. The trial court ruled that SMG was entitled to the royalties. SMG now contends the May 2001 Order constituted a finding by the trial court that SMG was entitled to receive Bramlett's royalties in perpetuity. We are unable to reach the same conclusion, and find the contention is simply not supported by the record. Moreover, we find nothing in the record that would preclude the trial court from subsequently concluding, as it did, that Bramlett had the right to terminate her relationship with SMG after which she would be entitled to receive her royalties.

IN CONCLUSION

The judgment of the trial court is affirmed. This matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against Sheridan Music Group, Inc.

FRANK G. CLEMENT, JR., JUDGE